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Chair of the Aetna Plaintiffs' Executive Committee

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

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IN RE: AETNA UCR LITIGATION

MDL NO. 2020

MASTER DOCKET NO.
07-3541 (FSH) (PS)

This Document Relates to: ALL CASES

NOTICE OF MOTION

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PLEASE TAKE NOTICE that, upon the Declaration of Robert J. Axelrod, dated May 28, 2010, the Exhibits annexed thereto, the Memorandum of Law in Support, and upon all prior pleadings and proceedings heretofore had herein, the Subscriber and Provider Plaintiffs,¹ by their counsel and the Plaintiffs' Executive Committee, hereby move before the Honorable Faith S. Hochberg for an Order, pursuant to Rule 23 of the Federal Rules of Civil Procedure, certifying the Classes defined in Schedule A, appointing the moving Plaintiffs as class representatives of

¹ The moving Plaintiffs are: Michele Cooper, Michele Werner, Darlery Franco, Paul and Sharon Smith, Carolyn Samit, and Jeffrey M. Weintraub (collectively, "Subscriber Plaintiffs"); Alan B. Schorr, M.D., Frank G. Tonrey, M.D., Carmen M. Kavali, M.D., and Brian Mullins, M.S., P.T., (collectively, "Provider Plaintiffs").

their respective classes, and appointing counsel as Class Counsel pursuant to Fed. R. Civ. P. 23(g), and for such other and further relief as is just and proper.

PLEASE TAKE FURTHER NOTICE that, pursuant to the Order dated April 14, 2010, opposition briefs shall be filed no later than July 2, 2010. Replies will be served no later than July 16, 2010.

Dated: May 28, 2010

/s/ Robert J. Axelrod

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Schedule A

The Plaintiffs and the Classes

The following Plaintiffs bring this motion:

Subscriber Plaintiffs: Michele Cooper, Michele Werner, Darlery Franco, Paul and Sharon Smith, Carolyn Samit, and Jeffrey M. Weintraub (collectively, “Subscriber Plaintiffs”); and

Provider Plaintiffs: Alan B. Schorr, M.D., Frank G. Tonrey, M.D., Carmen M. Kavali, M.D., and Brian Mullins, M.S., P.T. (collectively, “Provider Plaintiffs”).

a. Subscriber ERISA Class

Subscriber Plaintiffs Werner, Franco, and the Smiths seek to be class representatives of an “Subscriber ERISA Class,” defined as:

All persons who are, or were, from July 30, 2001 through the present (“ERISA Class Period”), Members in any group healthcare plan insured or administered by Aetna, subject to ERISA (other than New Jersey small employer plan Members), who received hospital or medical services or supplies from a Nonpar provider (or any provider Aetna considered Nonpar for purposes of paying benefits) for which Aetna (or any third party acting on behalf of Aetna) allowed less than the provider’s billed charge in determining benefits.

b. Subscriber New Jersey SEHP and Individual Plan Class

Subscriber Plaintiffs Cooper and Samit seek to be class representatives of a “Subscriber New Jersey SEHP and Individual Plan Class,” defined as:

All persons who are, or were, from July 30, 2001 through the present (“New Jersey SEHP and Individual Plan Class Period”) Members in any New Jersey small group healthcare plan insured or administered by Aetna, subject to ERISA, and Members of Individual Plans insured or administered by Aetna not subject to ERISA who received hospital or medical services or supplies from a Non-Par provider (or any provider Aetna considered Nonpar for purposes of paying benefits) for which Aetna (or any third party acting on behalf of Aetna) allowed an amount less than the provider’s billed charge in determining benefits.

c. **Subscriber RICO Antitrust Class**

Each of the Subscriber Plaintiffs seek to be class representatives of a “Subscriber RICO Antitrust Class,” defined as:

All persons who are, or were, from March 1, 2001 through the present (“RICO Class Period”), Members in any healthcare plan (ERISA or non-ERISA) insured or administered by Aetna who received hospital or medical services or supplies from a Nonpar provider (or any provider Aetna considered Non-Par for purposes of paying benefits) for which Aetna (or any third party acting on behalf of Aetna) allowed an amount less than the provider’s billed charge in determining benefits, based on the use of the Ingenix Databases.

d. **Subscriber RICO Section 664 Subclass**

Each of the Subscriber Plaintiffs except Weintraub seeks to be class representatives of a “Subscriber RICO Section 664 Subclass,” defined as:

All persons who are, or were, from March 1, 2001 through the present (“RICO Section 664 Subclass Period”), Members in any healthcare ERISA plan insured or administered by Aetna who received hospital or medical services or supplies from a Nonpar provider (or any provider Aetna considered Non-Par for purposes of paying benefits) for which Aetna (or any third party acting on behalf of Aetna) allowed an amount less than the provider’s billed charge in determining benefits, based on the use of the Ingenix Databases.

e. **Subscriber New York Damages Class**

Weintraub seeks to be a class representative of a “Subscriber New York Damages Class,” defined as:

All persons or entities residing in New York who paid premiums for out-of-network health insurance coverage from Aetna and received reimbursement for ONETs between April 29, 2004 and the present.

f. **Non-ERISA Class**

Weintraub also seeks to be a class representative of a “Non-ERISA Class,” defined as:

All persons who, are or were, from April 29, 2004 through the present (“Non-ERISA Class Period”) Members in any plan insured or administered by Aetna, which was not subject to nor governed by ERISA, who received hospital or medical services or supplies from a Non-par provider for which Aetna (or any third party acting on behalf of Aetna) allowed less than the provider’s billed charges in determining benefits.

g. Provider Class

The Provider Plaintiffs seek to be class representatives of a “Provider Class,” defined as:

All Nonparticipating healthcare providers within the boundaries of the United States of America, who provided services to any member of any Aetna insured or administered health plan, at any time during the period June 3, 2003 through the date of certification and were paid less than their billed charge for such “out-of-network” medical services.

h. Provider ERISA Subclass

In addition, the Provider Plaintiffs seek to be class representatives of a “Provider ERISA Subclass” defined as:

All non-participating healthcare providers, within the boundaries of the United States of America, who provided services to any member of any Aetna insured or administered group health plan subject to ERISA, at any time during the period June 3, 2003 through the date of certification and were paid less than their billed charge for such “out-of-network” medical services.